

Date of decision: 6-12-1995

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr. I.S. Supehia for the petitioner  
Mr. R.H.Mehta for the respondents.

Coram: S.K. KESHOTE, J  
(6-12-1995)

ORAL JUDGMENT:

The petitioner, who was holding the post of Deputy Director (MM) in Oil and Natural Gas Corporation Ltd., ('ONGC' for short) has filed this petition under Article 226 of the Constitution of India praying therein that the order dated 27-7-1995 or of any other date, cancelling the

promotion of the petitioner to the post of Deputy Director (MM) with effect from 1-1-1987 and reverting him to the post of Stores & Purchase Officer be quashed and set aside. It has further been prayed that the respondents be directed to release the promotion order dated 15-10-1992 of the petitioner with effect from 1-1-1992 on the post of Senior Deputy Director (MM) with all consequential benefits including arrears of difference of pay with interest.

2. During the pendency of this writ petition, it is not in dispute between the parties that the petitioner has already retired from the service of ONGC on 30th November, 1995. Learned counsel for the petitioner made statement that he does not press the writ petition to the extent it relates to prayer 'B' in para 19 of the writ petition, that is, to the extent of claiming promotion on the post of Senior Deputy Director (MM) with effect from 1-1-1992. Order accordingly.

3. This writ petition has been filed by the petitioner on 22-8-1995 and at that point of time though he has stated that the order of his promotion dated 5-10-1989 on the post of Deputy Director (MM) has been cancelled he has not filed a copy of the order along with writ petition. In para 9 of the writ petition the petitioner averred that he has come to know that the order has been passed by the competent authority on 27-7-1995 reverting the petitioner from the post of Deputy Manager (MM) to the post of Stores & Purchase Officer by cancelling the order dated 5-10-1989, but he has not been served with the aforesaid order, and as per his information the same has been despatched by the Dehradun Office. It has been prayed that the respondents may be directed to produce the said order in this Court.

4. The order of reversion is dated 28-7-1995. Though the petitioner had known all the facts and the contents of the said order and even about despatch of the same from Dehradun Office, he has not waited for receipt of the order and in hot haste approached this Court. Filing of the writ petition without accepting the order of reversion, though having full knowledge of the same, is highly unjustified and unreasonable. It is in fact an attempt to abuse the process of the Court. The petitioner, it appears from the reading of the averments, has tried to hide that order from this Court. It was a concluded order. Admittedly the petitioner should have waited for the order and after receiving the said order should have filed the writ petition. After filing of the writ petition, the petitioner brought the matter on 23-8-1995 by way of urgent circulation. Then the petitioner filed an application for amendment of the writ petition, and along with the amendment application he filed

a copy of the said order dated 28th July, 1995. This court does not appreciate this conduct of the petitioner of hide and seek. As the matter has been admitted I do not consider it to be a case where the writ petition should be dismissed on this ground, otherwise I would have taken serious view of the matter. Not only the Court has admitted the matter, but has granted interim relief, and after availing full benefit of the interim relief the petitioner has retired from service of ONGC.

5. The facts which are not in controversy between the parties need to be briefly stated. Three vigilance cases were pending against the petitioner, the details of which are as follows:

- (1) F.No. 5/3/84 RC/147/84 Ahmedabad dated 1-2-1984
- (2) F.No.5/1/84/Vigilance (RC/42/83)/Ahmedabad, dated 16-12-1983.
- (3) F.No.16/71/89 Vigilance.

In none of the vigilance cases the C.B.I. filed any charge sheet against the petitioner, and only departmental action is proposed. In one of the cases, action for major penalty has been proposed, but only on completion of criminal case filed against Suresh Kumar Kantilal, G.B.Chandrama and J.N. Sejpal. It is not in dispute that that criminal case is pending and as such no charge sheet whatsoever was given in respect thereof. In one case charge sheet was given on 22-8-1987 which culminated in the order dated 31st March, 1994 by which penalty of withholding of one grade increment without future effect has been imposed on the petitioner. Copy of the said order imposing penalty is annexure-I to the reply affidavit filed by the respondent. In another case charge sheet was given to the petitioner on 7-12-1994 which also culminated in order of penalty dated 9-5-1995, whereby the disciplinary authority has imposed the penalty of withholding of next promotion to the petitioner. Copy of this order has been produced along with the reply affidavit at annexure-II. Learned counsel for the petitioner stated that the petitioner has already filed appeal against both the aforesaid orders of penalty which are pending for disposal before the appellate authority.

6. Though three vigilance cases were pending for investigation and in one case charge sheet has been given to the petitioner for departmental inquiry on 22-8-1987, but by order dated 5-10-1989 the petitioner was promoted to the post of Deputy Director (MM) with effect from 1-1-1987. So

far as further promotion is concerned, the facts relating thereto need not be given as the petitioner's counsel has already given up the challenge in that regard. By amending the petition, order annexure-H dated 28-7-1995 was produced, by which the respondents have withdrawn the adhoc appointment given to the petitioner to the post of Deputy Director (MM) with effect from 1-1-1987. The reasons for cancellation of the promotion have been given in para 2 of the said order, which stated that Shri B.K.Jain was involved in three vigilance cases and disciplinary proceedings were pending against him. A penalty of withholding of one increment without cumulative effect with effect from 13-3-1994 was also imposed on Shri H.K.Jain in one of the decided vigilance cases and other two cases are still pending.

7. In the writ petition the learned counsel for the petitioner raised several contentions, challenging the validity, legality and correctness of the order dated 28th July, 1995, but I do not consider it necessary to refer to all those contentions, except one which, according to me, is sufficient to allow this writ petition. One of the contentions which has been raised by the learned counsel for the petitioner is that the order dated 28th July, 1995 has been passed without giving notice or an opportunity of hearing to the petitioner. In support of this contention the petitioner has placed strong reliance on the decision of this Court in P.N. Parikh vs. Oil and Natural Gas Commission ( special civil application No.3855 of 1991) rendered on 19-12-1991. Learned counsel for the petitioner contended that the petitioner has been promoted to the higher post with effect from 1-1-1987 which has given a valuable right to him, and he could not have been deprived of the said right without giving any opportunity of hearing. It has further been contended that the order of reversion of the petitioner dated 28th July, 1995 has resulted in civil consequences. The petitioner's status will be lowered down which will further result in lower downing of his pay and consequential monetary loss and other retirement benefits. The petitioner has been given promotion from 1-1-1987 and this promotion has been ordered to be cancelled vide order dated 28th July, 1995 with retrospective effect and this will further result in serious monetary loss, leaving apart the question of lowering down of his status. While passing such an order which results in civil consequences the principles of natural justice have to be followed.

8. On the other hand Mr. Rajani Mehta, learned counsel for the respondents has contended, relying on Government O.M. dated 12-1-1988, that it was only an adhoc appointment of the petitioner which has been given pending decision of

the vigilance inquiry. He contended that as per clause 6.4 of the said Memorandum adhoc promotion given to the petitioner has to be brought to an end as in one of the vigilance inquiry the petitioner was penalised. Referring to the order of promotion of the petitioner Mr. Mehta has contended that the promotion order was made with specific condition that the appointing authority reserved its right to cancel adhoc appointment and to revert the officer to his substantive grade at any time without assigning any reason and without prejudice to any departmental action pending against him. Mr. Mehta further contended that the respondents have not committed any illegality whatsoever in passing the order dated 28th July, 1995, and that the same is in consonance with the O.M. dated 12-1-1988 and as per the terms of the order of promotion of the petitioner. So far as the contention of the learned counsel for the petitioner regarding violation of the principles of natural justice is concerned, Mr. Mehta contended that as per clause 6.4 of the Memorandum dated 12-1-1988 and the special conditions as incorporated in the promotion order, no notice or opportunity of hearing was required to be given to the petitioner.

9. I have considered the submissions which have been made by the learned counsel for the parties. I do not want to express any opinion on merits of the case as well as the contentions which have been raised by Mr. R.H. Mehta supporting the order dated 28th July, 1995 as it may either way prejudice the parties on remand of the matter before the authority for passing fresh order after following the principles of natural justice. Learned counsel for the petitioner strongly pressed that the order dated 5-10-1989 is not an order of adhoc appointment by promotion, but it was regular promotion. Mr. Supehia, learned counsel for the petitioner has relied on the decision of the Supreme Court in the case of Union of India vs. K.V. Janakiraman, reported in JT 1991 (3) SC 527, and argued that on the day, i.e. on 1-1-1987 from which promotion was given to the petitioner, no charge sheet was served upon him, nor any charge sheet was submitted against him in criminal court and as such even as provided in Circular dated 12-1-1988 this plea would not have been available to the respondents. Again I may make it clear that it is not proper for this Court to express any opinion on the merits of the contentions raised by Mr. Supehia where it considers to send the matter to the authority to pass fresh order after notice to the petitioner.

10. The petitioner has been given promotion under order dated 5-10-1989 with effect from 1-1-1987 to the post of Deputy Director (MM), whereas at the verge of his retirement

this promotion is sought to be taken back with retrospective effect and not with prospective effect. It will certainly entail civil consequences. When order dated 5-10-1989 was passed, in one of the vigilance cases charge sheet was already given, and two other cases were pending investigation. The promotion was given with effect from 1-1-1987, and the petitioner and the respondents have not given out in the respective pleadings or during the course of argument what signification this date has in the matter. When the promotion has been related back to 1-1-1987, i.e. the date on which in none of the vigilance cases charge sheet was submitted or any charge sheet for departmental enquiry was given, it cannot be said to be proper, reasonable and fair to take away the promotion with retrospective effect, without giving any notice or opportunity of hearing to the petitioner. The petitioner has been protected at the interim stage in this case and he retired from service of the Corporation from the post of Deputy Director (MM). In the peculiar facts of this case, when promotion is sought to be taken away with retrospective effect, it is expected of the respondents to have followed the principles of natural justice.

11. In the result the writ petition succeeds in part and the same is allowed partly. The order dated 28th July, 1995 produced at annexure-H to the writ petition is quashed and set aside. It is made clear that it shall be open to the respondents to consider the matter afresh and pass appropriate orders in accordance with law after giving full opportunity of hearing to the petitioner. It shall also be open to the petitioner to raise all the grounds in support of his claim as and when the respondents proceed to draw fresh proceedings in this respect against him. Rule made absolute to the aforesaid extent with no order as to costs.

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